

The oldest layman assumes the title of disciple to the last inducted pyin-sin, and, with clasped hands, addresses him as payā, the highest title the language affords. The monk's commonest actions, walking, eating, sleeping, are referred to in honorific language, different from that which would be used of a layman, or even of the king, performing the same thing. The highest officials bow down before them, and impose upon themselves the greatest sacrifices, both of time and money, to build splendid kyaungs for them, and minister to their wants. Finally, the monk's person is sacred and inviolable. Nothing he does can subject him to the civil law. He bears the title of Thagiwin Mintha, Thagiwin Prince, as the heir of the scion of Kapilawut, and receiver of his inheritance.

792
198
554

[671] ●

CHAPTER LV

JUDICIAL ADMINISTRATION

BUDDHIST law as it was administered in Upper Burma dates from the beginning of the now existing world. The first crime was theft; the first punishment was a scolding, speedily followed by a thrashing; and the first judge was Mahā Thamada, elected by vote of the people to be ruler over them. No doubt there were written laws then, but they have not come down to us. The written code in use was given to the world by Manu, originally a cow-herd, but afterwards a minister. He found them written in large characters on the walls of another world, to which he was transported when in an ecstasy. These laws formed the first code. There have been since compiled from them eight other codes in the kingdom of Prome and other ancient states in Burmah. The last, called Mahā Manu Thaya Shwe Myin, was drawn up on the foundation of the sixth kingdom of Ava, in the year 1137 B.E. (1775 A.D.), by Minhkaung Gyi, who, with the aid of a learned monk, went through and carefully revised all the codes. These laws in their integrity are those which governed Upper Burma and now govern the whole of Burma in so far as they regulate social relations. The codes were written in Sanskrit and Magadha, a language usually called Pali through an error. The name Pali signifies really not a *language*, but "The Canon," handed down to Buddhists, as composed by pious disciples from the teachings of Shin Gautama. The Magadha or Pali code accepted is called Manu Wunnana, from its writer and compiler, a minister of state in Ava. It is looked upon as a commentary on, or a key to, the codes, and contains the whole of the laws.

671 ●
673
681

671
719

671 Besides the codes there exist also twenty standard collections of decisions, leading cases in which judgment was delivered by kings, queens, princesses, and ministers. These are by some regarded as obsolete, by many lugyis, however, considered to have still the force of law. The best known of these are:—

The decisions of Mahawthata, the embryo Budh.

- " Widuya, one of the ten great avatars.
- " Thudhammasari.
- " Kutha.
- " Dwuttabaung, first king of Prome.
- " Sinbyushin.

671 The laws given by Manu to the ruler Mahā Thamada
673 numbered altogether eighteen. From these all others have been framed. The eighteen original laws had regard to:—

1. Borrowing money. 2. Deposits of money. 3. Stealing and altering the appearance of property and selling it.
4. When a gift may be had back on demanding it, and when not, there being six kinds of gifts. 5. Deciding the wages of carpenters. 6. Deciding the wages of labourers.
7. Breach of promise. 8. Deciding disputes between the owners of cattle and neat-herds. 9. Settling disputed boundaries. 10. Deciding whether property purchased may be returned. 11. Accusations. 12. Theft or concealment.
13. Assault. 14. Murder. 15. Deciding the proper conduct of husband and wife. 16. The question of slavery. 17. Deciding if cock-fighting, betting, or gambling debts shall be paid.
18. Partition of inherited property.

671 Manu also laid down that persons appointed to administer the laws should not only have a competent knowledge of the code, but should also possess fourteen qualifications, as follows:—1. To decide in strict accordance with the law. 2. To be respectable. 3. To be of moral character. 4. To inspire awe. 5. To command love. 6. To be of good birth. 7. To be religious. 8. To be virtuous. 9. To be truthful. 10. To be talented. 11. To be devoted to the study of the law. 12. To possess honesty of purpose and intention. 13. Knowledge of the principal

parties and pleaders in a suit. 14. Fearlessness in deciding cases, or being lion-hearted.

The supreme court in Burma was the Hlutdaw constituted of four wungyis, the chief ministers of state, who held their meetings in a hall within the palace, which took its name from the court. Each wungyi (great burden) had its wundauk (prop of the burden) as an assistant to sit with him in court. These wundauks formed the third rank of ministers, under the four atwinwuns (inner burdens), who were a kind of household ministers, or privy councillors, and sat in a special court, called the Byadeit, also in the palace. The latter had nominally as their chief duty to deal with the monopolies which Thibaw Min set himself to establish in such abundance. But as any man, no matter what special education or preparation he might have had, was considered eligible for any post, political, military, civil, or judicial, so both the Hlut and the Byadeit conducted all manner of business, from the external relations of the country to ordinary criminal or civil appeal cases sent up from the yôndaw, the criminal court, where the myowuns (city burdens), usually two in number, sat daily; or from the tayayôn, the civil court, where two tayathugyis (great men of the law) presided. In either of these inferior courts it was not at all uncommon for a wundauk, or even a wungyi, to attend and investigate important cases. But original suits were also frequently heard before the Hlut, and many cases were decided by the wungyis or any of the subordinate officials in their private houses. Formerly indeed this was the chief source of their salaries, for costs to the amount of ten per cent on the property under dispute went of right to the judge. The late king instituted the custom of fixed salaries, and Thibaw Min retained it, but neglected to pay the money. It will thus be seen that law matters, even in the capital, were carried on in a very casual, haphazard sort of a way. There was no attempt at a distribution of public business into departments, and each individual wungyi took his part in deliberations on all kinds of subjects with as much confidence as if he were an expert.

If the capital displayed a lack of system, there was

671 ●

692

645

647

[651]

immediate superior a certain fixed sum, determined without regard to favourable seasons, health of the population, or anything of that kind, and as each man was judge over the people in his charge, it may naturally be supposed that the general population did not lead a very happy life. Complaints might be made against extortion and illegal decisions, but the heads of tracts, if they had the money, could always stifle inquiry.

692
647

Some of the laws deduced from Manu's eighteen original enactments strike one as being rather singular. For example, if two men quarrel and fight and one of them is killed, there is no penalty; but if a third party interferes and kills or injures one of the original combatants, he must pay the ordinary fine for murder, or causing hurt. Should he himself be killed, the other two are subject to no penalty. When a man is guilty of adultery with another man's wife, if it be proved to be the first time, he must pay the fine for adultery, usually the price of the woman, assessed according to the judge's opinion; if it is her second offence, he only pays half the fine; but if she has been guilty for a third time, he pays no penalty at all.

671 ●
673

If one man curses another and some evil happens, he must pay twice the price of the damage incurred; thus, if the man dies he must pay twice the value of a man; two cows if a cow dies, and so on.

When the king dies there is a general pardon of all offences, and a remission of fines, except in the case of debt. There are also seven things which cannot be reclaimed after the death of the king under whom they were promised or given. These are:—1. Deposits. 2. Pledges. 3. Money paid wrongly by the parties in a law-suit. 4. Things carried off by violence, or seized upon without sufficient title. 5. Promises. 6. Things secretly stolen. 7. Things that have been voluntarily given up by one man and taken possession of by another.

673
643

The decisions of Mahawthata, Princess Thudhammasari, and others are of little value from a strictly legal point of view. They are chiefly of a religious character. The princess begins by saying that her cases are to be considered as guides to nobles and judges as to the line they

671
773

611
773
should follow. To an English barrister they would seem to be excerpts from the *Arabian Nights*, and as far from precedents as it is possible to imagine anything. The play of Mahawthata tells of the Lord Buddha in the birth in which he exhibited the most consummate wisdom and acumen, as in Wethandaya he embodies the spirit of liberality. In both these births, as in his last, Shin Gautama spoke from the moment he was brought forth. As Wethandaya he immediately entreated his mother for something to give in charity to the poor, and distributed forthwith the four hundred pieces of silver she gave him. As Mahawthata he appeared in the world with a plant in his hand, and, holding it up, said, "This is medicinal herb." Throughout all this life he was constantly displaying extraordinary wisdom, jealous ministers being in the habit of propounding difficult cases to him. Thus he was shown a log of sha (*Acacia Catechu*), from which cutch, stupidly called *Terra Japonica*, is obtained, and asked which was the upper end and which the lower end. He solved the problem by putting it in the water, when the lower end, as being the heavier, sank deeper in the water. Another case is exactly similar to the famous Biblical decisions of Solomon. These decisions, though they may be interesting, are hardly valuable as standard leading cases.

673
Some of the definitions of crimes in the Dhammathat are a little singular. Thus among the ten descriptions of assault are mentioned: "saying in regard to a lunatic, a drunkard, or a half-witted person who is ill, that he will die, and he dies"; "refusing restitution for cattle killed"; "standing near an assailant." To avoid being summoned for one of the twenty-seven kinds of abuse one must be very circumspect, for there is ground for action if one says Hé to a man, as the Mandalay people were fond of shouting Hé Kalā after Europeans. It is equally risky to address a man as nin, i.e. in the third person; to say that he is "deficient in strength"; that he is a stutterer, bow-legged, broken-down, squinting, or afflicted with white spots on his body; that he is heretical, or, finally, that he is given to using bad language.

674
The niceties of the law may be illustrated by the following case from the Talaing Dhammathat. A man in search

of honey climbed up a high tree to get at a hive. His foot slipped and he fell off a large branch on to a small one below. He was afraid that this would not be able to support his weight, and called out for assistance to a mahaut, who was passing by on his elephant. The elephant-driver held up the hook with which he guided his animal and told him to come down by it. The bee-hunter seized the hook, and while he was holding it the elephant took fright and ran away. There were then the mahaut hanging on to his hook and the bee-hunter clinging to the slender branch which momentarily threatened to give way. Fortunately, just at this moment four persons passed by and were called to by both the bee-hunter and the elephant-driver to come and save them. They could think of no other expedient than to hold out their clothes, which accordingly they did, spreading them out as high above their heads as possible, so as to break the fall. The two men dropped from the tree on their four preservers, but what between their own weight and the awkwardness of the iron driving-hook, the whole six were knocked senseless and fell on the ground. Whilst they lay in a swoon a doctor came up and gave them medicines which brought them round. When all had recovered, he demanded his fee. But the question was who was to pay him. The elephant-driver said he should not be asked to pay because he tried to save the bee-hunter's life and was an innocent cause of the injuries sustained by his rescuers. The bee-hunter on his part maintained that he should not be called on for payment, seeing that if he had not held on so tight, the mahaut would have fallen and been killed. Finally, the four rescuers said that it was utterly unreasonable to ask them to pay, seeing that it was through pure generosity that they had held out their clothes to save the lives of the mahaut and the bee-hunter and through this act of kindness they themselves had been hurt. The elephant-driver and the bee-hunter somewhat thanklessly retorted that if a ladder had been brought, or had been constructed, they could have come down in perfect safety and without hurt to any one, and that therefore the four rescuers should pay.

The question as to who is liable in this case is a nice

● 671

one, as also is the point as to who should be made defendants, and who should be the witnesses. The Talaing Dhammathat says that the incident occurred in the province of Kawdônpayit, in Hindustan, and that the case gave rise to the recognition of the root, trunk, and branches of the law, which till then had not been defined. From whom, or whether the doctor got his fee at all, we are not told.

693

Advocates, pleaders, or barristers were, it is stated, unknown until a case occurred when certain suitors from the jungle came before the king and were not able to understand the court language. A court official was therefore allowed to assist them and turn their rustic jargon into comprehensible speech. These as "standing before" the king were called Shéné, as it were mouthpieces for the parties to the suit, and the king, who acted as judge. The convenience derived from their superior knowledge and experience afterwards led to the establishment of a regular body of barristers.

695

If the laws are, some of them, somewhat singular to those who are accustomed to the scientific Indian penal and civil codes, as well as to the growth of centuries of Western practice, the method of binding over witnesses to tell the truth, or at least the book on which they are required to pledge themselves, is sufficiently startling. The Book of the Oath, Kyeinsa, is still used in British courts of justice, and it is to be hoped that all the younger members of the population know what terrible punishments they are drawing down on themselves when they hold it over their heads and promise to tell the truth; what frightful penalties will befall them if they swerve in the least degree from the exact facts of the case. In the old times a man used always to be sworn on this book in a place where there was no shadow, or in a pagoda, and this custom was maintained to the end in native Burma. There was a special shrine for the purpose in Mandalay, and at the Shwe Mingôn Payā, near the oilwells of Yenangyaung, there is a stone, ordinarily deposited between two images of the Hentha, the Brahminy goose, which the swearer takes in his hand, lamps being lighted at the same time. The book itself might not be kept in ordinary places. Some copies were kept in the court in a specially consecrated box, some in a zayat, and some, more

CHAPTER LVII

LAND TENURE

IN India the Raja has always been considered the chief proprietor of the soil and the lord paramount over all those who own it or dwell upon it. In Burma precisely the reverse of this system obtained. The king was indeed considered entitled to a share of the produce, and, as a matter of fact, undoubtedly got pretty nearly all of it; but the origin of the land tenure rested on an entirely different foundation. The Burmans go back to the first peopling of the earth and the appointment of the saintly Payālaung to be ruler over them. Mahā Thamada came after the lands had been pretty generally taken up by the people, and therefore the cultivators of the original thalé san had no intention of appointing him supreme landlord, when they chose him to be the source of the Law and of the administration of justice. He acquired a share of the produce of the country only by the free gift of the people, who, to provide revenues for him, of their own accord surrendered a tenth part of all their crops that he might be free to devote himself entirely to the management of the public affairs and the execution of the laws. This right to a tenth of the produce of the soil, and no more, is explicitly laid down in the Indian Buddhist code, the Dhammathat, or laws of Manu. This ancient book, which, by the way, is entirely distinct from the Indian *Institutes of Manu*, enunciates as follows in the sixth chapter: "The king, who is our ruler, must abide by the ten kingly laws. All land which is unclaimed shall be his, but he shall have no right to take all. Such lands as are cultivated by man, or have been previously reclaimed, shall

423
773

[651]

423
671 ●

423

671

remain to the cultivator and his heirs. But he shall have a tenth of the produce of all rice-lands, orchards, and gardens ; and all excise and ferry duties, as well as canals and public works, shall belong to him. Through a succession of worlds the first king, the great Mahā Thamada, has established one-tenth to be his portion for ever, and let this be regarded as an everlasting precedent."

According to the Dhammathat there are seven methods by which landed property may be acquired. These are as follows :—1. By gift from the king. This is made only to soldiers and officials. 2. By inheritance. 3. By purchase. 4. By allotment from civil officers. 5. By personal reclaiming from the jungle. 6. By gift. 7. By unchallenged occupation for a period of ten years.

423

561

The first two titles are called perfect. The remainder are open to question, and may be disputed by any one who can show a prior claim. In actual fact, however, it may be said that the man who reclaims for himself a piece of land out of the jungle becomes by his industry proprietor of the clearing, without reference to local authorities, village elders, or any one at all, and has thereafter an inalienable right to his tenure, with no dues to pay whatever, except the sum the taikthugyi may see fit to assess him at. That worthy's valuation, however, always displayed an enthusiastic belief in the fertility of the soil. The landed proprietor could dispose of it by gift, or he might sell it ; otherwise it descended to his heirs and assigns in the order of succession ; the whole right and title was essentially vested in the owner and the heirs of his body. The tenure was, therefore, by what lawyers call fee-simple, udal, or allodial right. The estate left by the original occupier was seldom broken up. The heirs tilled parts of it, or gathered the whole crop in successive years ; so that the land did not require to be split up into infinitesimal parts. This practice was rendered all the easier by the thinness of the population. It was open to any one at any time to carve for himself out of the forest a holding of his own, and thus there was no temptation to break up the original family acres. It is singular that under a rule so completely despotic as that of Burma, where every man was the king's slave, and could not cross the borders without his permission,

[428]

423

CHAPTER VIII

CRIME AND PUNISHMENT

‘Overcome anger by kindness, evil by good.’

Dammaṇāda.

NOT very many years ago an officer in Rangoon lost some currency notes. He had placed them upon his table overnight, and in the morning they were gone. The amount was not large. It was, if I remember rightly, thirty rupees; but the loss annoyed him, and as all search and inquiry proved futile, he put the matter in the hands of the police.

And before long—the very next day—the possession of the notes was traced to the officer's Burman servant, who looked after his clothes and attended on him at table. The boy was caught in the act of trying to change one of the notes. He was arrested, and he confessed. He was very hard up, he said, and his sister had written asking him to help her. He could not do so, and he was troubling himself about the matter early that morning while tidying the room, and he saw the notes on the table, and so he took them. It was a sudden temptation, and he fell. When the officer learnt

685
671●
196

94 THE SOUL OF A PEOPLE CH.

685 all this, he would, I think, have withdrawn from
671 the prosecution and forgiven the boy ; but it was
116 too late. In our English law theft is not com-
poundable. A complaint of theft once made must
be proved or disproved ; the accused must be tried
before a magistrate. There is no alternative. So
the lad—he was only a lad—was sent up before
the magistrate, and he again pleaded guilty, and
his master asked that the punishment might be
light. The boy, he said; was an honest boy, and
had yielded to a sudden temptation. He, the
master, had no desire to press the charge, but the
reverse. He would never have come to court at all
if he could have withdrawn from the charge. There-
fore he asked that the magistrate would consider all
this, and be lenient.

But the magistrate did not see matters in the
same light at all. He would consider his judgment
and deliver it later on.

When he came into court again and read the
judgment he had prepared, he said that he was
unable to treat the case leniently. There were
many such cases, he said. It was becoming quite
common for servants to steal their employers' things,
and they generally escaped. It was a serious matter,
and he felt himself obliged to make an example of
such as were convicted, to be a warning to others.
So the boy was sentenced to six months' rigorous
imprisonment ; and his master went home, and before
long had forgotten all about it.

But one day, as he was sitting in his veranda
reading before breakfast, a lad came quickly up the
stairs and into the veranda, and knelt down before

VIII CRIME AND PUNISHMENT 95

him. It was the servant. As soon as he was released from gaol, he went straight to his old master, straight to the veranda where he was sure he would be sitting at that hour, and begged to be taken back again into his service. He was quite pleased, and sure that his master would be equally pleased, at seeing him again, and he took it almost as a matter of course that he would be reinstated.

But the master doubted.

'How can I take you back again?' he said.

'You have been in gaol.'

'But,' said the boy, 'I did very well in gaol. I became a warder with a cap white on one side and yellow on the other. Let the thakin ask.'

Still the officer doubted.

'I cannot take you back,' he repeated. 'You stole my money, and you have been in prison. I could not have you as a servant again.'

'Yes,' admitted the boy, 'I stole the thakin's money, but I have been in prison for it a long time—six months. Surely that is all forgotten now. I stole; I have been in gaol—that is the end of it.'

'No,' answered the master, 'unfortunately, your having been in gaol only makes matters much worse. I could forgive the theft, but the being in gaol—how can I forgive that?'

And the boy could not understand.

'If I have stolen, I have been in gaol for it. That is wiped out now,' he said again and again, till at last he went away in sore trouble of mind, for he could not understand his master, nor could his master understand him.

Each had his own idea of what was law, and

685
671 ●
196

96 THE SOUL OF A PEOPLE CH.

685 what was justice, and what was punishment. To
● 671 the Burman all these words had one set of mean-
196 ings; to the Englishman they had another, a very
different one. And each of them took his ideas
from his religion. To all men the law here on
earth is but a reflection of the heavenly law; the
judge is the representative of his god. The justice
of the court should be as the justice of heaven.
Many nations have imagined their law to be heaven-
given, to be inspired with the very breath of the
Creator of the world. Other nations have derived
their laws elsewhere. But this is of little account,
for to the one, as to the other, the laws are a
reflection of the religion.

681 And therefore on a man's religion depends all
671 his views of law and justice, his understanding of
779 the word 'punishment,' his idea of how sin should
196 be treated. And it was because of their different
religions, because their religions differed so greatly
on these points as to be almost opposed, that the
English officer and his Burman servant failed to
understand each other.

For to the Englishman punishment was a degra-
dation. It seemed to him far more disgraceful that
his servant should have been in gaol than that he
should have committed theft. The theft he was
ready to forgive, the punishment he could not.
Punishment to him meant revenge. It is the
revenge of an outraged and injured morality. The
sinner had insulted the law, and therefore the law
was to make him suffer. He was to be frightened
into not doing it again. That is the idea. He
was to be afraid of receiving punishment. And

VIII CRIME AND PUNISHMENT 97

again his punishment was to be useful as a warning to others. Indeed, the magistrate had especially increased it with that object in view. He was to suffer that others might be saved. <The idea of punishment being an atonement hardly enters into our minds at all. >To us it is practically a revenge. We do not expect people to be the better for it. We are sure they are the worse. It is a deterrent for others, not a healing process for the man himself. We punish A. that B. may be afraid, and not do likewise. Our thoughts are bent on B., not really on A. at all. As far as he is concerned the process is very similar to pouring boiling lead into a wound. We do not wish or intend to improve him, but simply and purely to make him suffer. After we have dealt with him he is never fit again for human society. That was in the officer's thought when he refused to take back his Burmese servant.

Now see the boy's idea.

Punishment is an atonement, a purifying of the soul from the stain of sin. That is the only justification for, and meaning of, suffering. If a man breaks the everlasting laws of righteousness and stains his soul with the stain of sin, he must be purified, and the only method of purification is by suffering. Each sin is followed by suffering, lasting just so long as to cleanse the soul—not a moment less, or the soul would not be white; not a moment more, or it would be useless and cruel. That is the law of righteousness, the eternal inevitable sequence that leads us in the end to wisdom and peace. And as it is with the greater laws, so it should, the Buddhist thinks, be with the lesser laws.

681
671 ●
779
196

points, hardly even in minor points, does the law discriminate against women.

The law as regards marriage and inheritance and divorce will come each in its own place. It is very much the same both for the man and the woman.

The criminal law was the same for both; I have tried to find any difference, and this is all I have found: A woman's life was less valuable than a man's. The price of the body, as it is called, of a woman was less than that of a man. If a woman were accidentally killed, less compensation had to be paid than for a man. I asked a Burman about this once.

'Why is this difference?' I said. 'Why does the law discriminate?'

'It isn't the law,' he said, 'it is a fact. A woman is worth less than a man *in that way*. A maid-servant can be hired for less than a manservant, a daughter can claim less than a son. They cannot do so much work; they are not so strong. If they had been worth more, the law would have been the other way; of course they are worth less.'

And so this sole discrimination is a fact, not dogma. It is a fact, no doubt, everywhere. No one would deny it. The pecuniary value of a woman is less than that of a man. As to the soul's value, that is not a question of law, which confines itself to material affairs. But I suppose all laws have been framed out of the necessities of mankind. It was the incessant fighting during the times when our laws grew slowly into shape, the necessity of not allowing the possession of land, and the armed

562
779
562
671
586
681

562
671
428

172 THE SOUL OF A PEOPLE CH.

562 wealth that land gave, to fall into the weaker hands
● 671 of women, that led to our laws of inheritance.

428 Laws then were governed by the necessity of war,
of subjecting everything else to the ability to fight.
Consequently, as women were not such good fighters
as men, they went to the wall. But feudalism never
obtained at all in Burma. What fighting they did
was far less severe than that of our ancestors, was
not the dominant factor in the position, and conse-
quently woman did not suffer.

She has thus been given the inestimable boon of
freedom. Freedom from sacerdotal dogma, from
secular law, she has always had.

And so, in order to preserve the life of the people,
it has never been necessary to pass laws treating
woman unfairly as regards inheritance; and as
religion has left her free to find her own position, so
has the law of the land.

562 And yet the Burman man has a confirmed opinion
that he is better than a woman, that men are on the
whole superior as a sex to women. 'We may be
inferior in some ways,' he will tell you. 'A woman
may steal a march on us here and there, but in the
long-run the man will always win. Women have no
patience.'

I have heard this said over and over again, even
by women, that they have less patience than a man.
We have often supposed differently. Some Burmans
have even supposed that a woman must be reincar-
nated as a man to gain a step in holiness. I do not
mean that they think men are always better than
women, but that the best men are far better than the
best women, and there are many more of them.

190 THE SOUL OF A PEOPLE CH.

593 usual for both husband and wife to sign all deeds
562 they may have occasion to execute. Nothing more
421 free than a woman's position in the marriage state
can be imagined. By law she is absolutely the
mistress of her own property and her own self; and
if it usually happens that the husband is the head of
the house, that is because his nature gives him that
position, not any law.

With us marriage means to a girl an utter breaking
of her old ties, the beginning of a new life, of new
duties, of new responsibilities. She goes out into a
new and unknown world, full of strange facts, leaving
one dependence for another, the shelter of a father
for the shelter of a husband. She has even lost her
own name, and becomes known but as the mistress
of her husband; her soul is merged in his. But in
Burma it is not so at all. She is still herself, still
mistress of herself, an equal partner for life.

593 I have said that the Burmese have no ideals, and
885 this is true; but in the Laws of Manu there are laid
671 down some of the requisite qualities for a perfect
wife. There are seven kinds of wife, say the Laws
of Manu: a wife like a thief, like an enemy, like a
master, like a friend, like a sister, like a mother,
like a slave. The last four of these are good,
but the last is the best, and these are some of her
qualities:

'She should fan and soothe her master to sleep,
and sit by him near the bed on which he lies. She
will fear and watch lest anything should disturb him.
Every noise will be a terror to her; the hum of a
mosquito as the blast of a trumpet; the fall of a leaf
without will sound as loud as thunder. Even she

will guard her breath as it passes her lips to and fro, lest she awaken him whom she fears.

'And she will remember that when he awakens he will have certain wants. She will be anxious that the bath be to his custom, that his clothes are as he wishes, that his food is tasteful to him. Always she will have before her the fear of his anger.'

It must be remembered that the Laws of Manu are of Indian origin, and are not totally accepted by the Burmese. I fear a Burmese girl would laugh at this ideal of a wife. She would say that if a wife were always afraid of her husband's wrath, she and he, too, must be poor things. A household is ruled by love and reverence, not by fear. A girl has no idea when she marries that she is going to be her husband's slave, but a free woman, yielding to him in those things in which he has most strength, and taking her own way in those things that pertain to a woman. She has a very keen idea of what things she can do best, and what things she should leave to her husband. Long experience has taught her that there are many things she should not interfere with; and she knows it is experience that has proved it, and not any command. She knows that the reason women are not supposed to interfere in public affairs is because their minds and bodies are not fitted for them. Therefore she accepts this, in the same way as she accepts physical inferiority, as a fact against which it is useless and silly to declaim, knowing that it is not men who keep her out, but her own unfitness. Moreover, she knows that it is made good to her in other ways, and thus the balance is redressed. You see, she knows her own strength and her own weak-

593
885
671

CITD
593
885
562

INTRODUCTION

3

of Hindu traders from South India. After the introduction of Buddhism into South India by Asoka in 261 a.c., the traders began to bring Buddhist elements to Thaton. With the establishment in the third or fourth century after Christ of the Hindu kingdoms in Java and Sumatra, Thaton became an important trading centre, and with the rise of a great Buddhist centre at Conjeveram in Madras in the fifth century, the Talaings began to receive religious writings in Pali. From that time onwards, learning was definitely established in the kingdom, and, as a result, a Talaing literature came into being. Anawrahta was interested in Pali only, and therefore when he destroyed the city, he burnt all the manuscripts except those in Pali.¹

The writing and learning that were thus introduced into Pagan took root at once. Prose and poetry as embodied in the language of the court and in songs had been in existence long before, though unwritten, and now the new learning turned them into written forms and began to develop them. Pali was studied everywhere, and in the newly-built temples with their crowded monastic life, works in Pali on religion, on Pali grammar and prosody, and on the legal code of Manu came to be produced.² Translations were also made, and soon Pagan became famous throughout India for its Pali scholarship. But

¹ The Burmese language belongs to the Tibeto-Burmese group, whereas the Talaing belongs to the Mon-Khmer group. In spite of Anawrahta's conquest and in spite of the fact that racially they were cousins, the Talaings became completely merged with the Burmese only in the eighteenth century. The probability of the Sanskrit drama reaching the Talaings is considered in chap. ii.

² G. E. Harvey, op. cit., pp. 59, 70.

The most famous for literary activity was the *Kyanaku Ohmmin* temple. Though built perhaps even before Anawrahta, when a corrupted form of Buddhism was prevalent, it is still in an excellent condition (Harvey, p. 17).

The code of Manu was compiled originally in Sanskrit, during the period 200 B.C.-A.D. 200. Since that time it has been one of the chief sources of Hindu law (J. D. Mayne, *Hindu Law*). The Burmese received it in a Talaing-Pali version in which the sacerdotal element had been done away with. That explains why, although Manu is one of the chief sources also of Burmese Buddhist law, it has little in common with Hindu law. The existence of the code as the chief source of Talaing law (Harvey, op. cit., p. 111) raises again the question, how far were the Talaing writings under the influence of Sanskrit and its literature? We shall never know. When Anawrahta destroyed Talaing institutions and historical and literary works, he intended that all knowledge of the past greatness of the Talaings should pass into oblivion so as to smooth his way towards unifying Burma into one single State.

Pali has been, since 1044, the classical language of Burma.

175
101
[779]
[177]

175
212
779
538

[197]
[101]

[671]

[198]

NATIVE GOVERNMENT

167



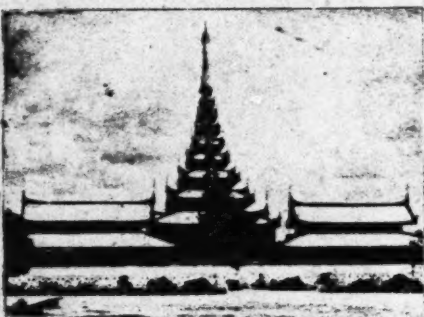
576. THE PALACE GARDENS.

A pregnant category is that of the "five enemies"—Fire, Water, Robbers, Rulers, Ill-wishers. The governors and deputies who acted as judges heard causes at the *ya*, an open shed in a public place. But every cause was presented in the first instance at the house of the official, and it is contrary to accepted ideas of politeness to approach a superior empty-handed, even on a mere visit of courtesy. The *pros* and *cons* of the case were understood before the regular hearing. At the hearing, the advocates of the parties (*ashé-ne*) publicly presented their pleas and the evidence was recorded. The Burmese form of oath is to take the *kyansa* in the hands, a book of imprecations which the witness invokes on his head if he should speak falsely. The judge or judges intimated their finding to their clerks (*sayé*), who recorded it in official style and read it out. The punishments awarded to criminals and the condition of prisoners were much like those prevailing in Europe at the time of the Renaissance. Every judgment of importance was registered in the *Hlutlaw* or chancellery at the capital, presided over by the four chief ministers (*Wundys*), through whom all royal commands to the governors of provinces issued. There was no regular system of appeals. The Hindu code of Manú served as a body of law, and statutes were decreed by the kings; but *thasan* (custom) supplied standards of a more practical and stable nature.

the cause of suffering and death, and the discredit reflected on officialdom by its methods, lead the best elements of the population to shun office, as a touching of pitch. The dearth of ability and character in the governing classes leaves the governed without efficient protection. The religious motive further operates in withholding information about criminals.



578. ROYAL MAID OF HONOUR (APYODAW).



300. PALACE FRONT AND SPIRE.

prominent are honorary magistrates. Independent spirit is on the increase; the officials have to reckon with a new temper in the people. Nevertheless, in municipal councils the supineness and complaisance of the native members are calculated to stultify the position accorded to them. Road-making and sanitation do not arouse their interest, and the local excise, the matter they long to deal with, is excluded from their jurisdiction

(cf. p. 157). The *thadyt* personally measures the fields, collects the land-tax and poll-tax from house to house, in such a circle as he can make the circuit of twice a year, and receives commission on the amount. He reports on matters within his circle. As

many revenue-circles as a native magistrate can personally control are united into a township, under a *myodt*, who at the same time supervises the co-ordinate grades of police distributed in the township. He publicly tries criminal and civil cases, under his powers as magistrate, by codes of law and procedure accessible to everybody. These codes form the most valuable models of system, in the vernacular, up to the present.

By their help both judges and advocates have trained themselves in law. Five to eight townships, according to facilities for

The British administration preserves the native official machinery, from the *thadyt* to the *myodt*, augmenting the numbers so as to reach every part of the area and curtailing the powers. Under native régime even *thadyts* might be *dabaing*. The new régime takes account of the village *ladyts* for the sake of their moral influence; many of them have been invested with power to compose differences up to small amounts, and some of the more



301. BURMAN PRINCESS.

204 SOUTHEAST ASIA IN THE COMING WORLD

178 Since those remote times, the Burmese customary law has
671 developed naturally, side by side with the growth and develop-
ment of Burmese society. The Burmese have no great national
code of laws gathered and authorized by a powerful king, no
great charter forced from an unwilling king, no great statute
passed by a national assembly fighting against tyranny, but
nonetheless the Burmese customary law shows a conception
of justice and a love of personal liberty in which every Bur-
mese must take pride.

671 To the Burmese, before the partial introduction of the
643 English legal system, law meant civil law. To them, civil law
was purely customary, and besides custom, there could be no
other source of law. The idea of legislation by a parliament
or a congress, or by executive order of the king was unfamiliar
to the Burmese. In English common law, the king could do no
[685] wrong, and thus he was above the law. But with the Burmese,
[694] the king himself was not exempt from the operation of the
civil law, and the king was often the defendant in civil suits,
usually for wrongful seizure of land. Admittedly the king was
above his subjects, and he had the right to levy taxes in service
or in kind, but he was also under a duty to give protection to
the people. To protect the people and to preserve the peace,
the king must prevent wrong-doing and punish wrong-doers,
and it was for the king to proclaim which acts were wrongs
from the point of view of public peace. Thus, at the beginning
of each reign, the king proclaimed his list of crimes, and the
punishments he would mete out to those who were found
guilty of those crimes.

671 The list of crimes varied with each king, but the usual
681 crimes were offenses against the state, murder, robbery, theft,
rape, and serious defamation. The usual penalties were whip-
ping, confinement in irons, maiming, banishment, and death,
with or without forfeiture to the king's treasury of the of-
[684] fender's possessions. In the eighteenth century, adultery was
added to the list of crimes, with the punishment of whipping
for both the woman and her paramour, and proclamation of
their guilt by beat of drums and gongs. In the nineteenth

MAUNG HTIN AUNG

205

century, the punishment for abduction of women was enhanced from one of confinement in irons to that of death. Thus what the English lawyer would understand by the term "criminal law" was considered to be the personal concern of the king. Therefore, when the ruling king died, and a new king ascended the throne, all persons undergoing punishment for crimes committed under the previous king, automatically were freed. Criminal jurisdiction therefore was considered to be merely an administrative function of the crown, and it concerned the executive, and not the judicial, officers of the state. Modern European writers have ever emphasized the despotism of Burmese kings, but the Royal Edicts proclaimed at the beginning of each reign clearly showed that the Burmese king was not a blood-thirsty individual devoid of all mercy. In the Edicts, we find the king delegating the function of meting out criminal justice to three of his Chief Ministers, admonishing at the same time that they should temper justice with mercy. The king in the Edicts ordered that even in capital crimes, the punishment should be one of banishment, and the sentence of death was to be reserved for vicious criminals. Even when the sentence of death had been passed, the execution was to be postponed for at least ten days so as to enable the king to consider the case and alter the punishment to one of banishment if the facts justified such alteration.

But as in England, the king was considered to be the fountain of justice, for his was the supreme court of the land. The kingdom was divided into provinces, each under a viceroy. Each province was further divided into cities, each city under a governor. Each city or city area was subdivided into towns and each town or town area into villages, with a headman for each town and each village. The courts of the headmen of towns or villages dealt with suits of small value, and there was a right of appeal from those courts to the courts of the governors of cities. The courts of the governors exercised both original and appellate jurisdiction, and appeals from these courts lay to the court of the viceroy, which also exercised both

692 original and appellate jurisdiction. These officers were execu-
631 tive officers under the crown, but when they sat as judges in
their respective courts, they were judges in the full sense of the
term, for they were free of all executive control. Finally there
[643] was the Supreme Court. This final court of appeal consisted of
the king as the president, the crown prince as the vice-presi-
dent, the four chief ministers, and their four deputies. The
king, however, attended only on rare occasions, and thus the
crown prince usually presided over the court. The law that
these courts administered and interpreted was the customary
694 law of the Burmese people. One special feature of the courts
[693] was their attempt to settle the case before actually trying it.
Lawyers, who were attached to the courts as officers, although
their fees were payable by the litigants, also endeavored to
conciliate the contending parties. Often the parties decided to
refer their suit to an arbitrator. There was no right of appeal
from the decision of an arbitrator, on the ground that the
arbitrator was chosen by the contending parties themselves.
When a suit had been heard and decided, the successful party
offered a dish of pickled tea to the other party, and if the latter
accepted, the parties were deemed to have been reconciled,
and there could be no appeal from the decision of the court.
The refusal of the unsuccessful party to accept the offered dish
of pickled tea served as his notice of appeal.

671 Burmese history, like the history of many countries, re-
[178] cords rebellions, invasions, and violent struggles for power,
177 but the development of Burmese customary law has been
175 singularly free from catastrophes and sudden changes. There
has never been a revolution in the Burmese customary law.
However, the law in the course of its long history experienced
three great impacts with the outside world. The first was the
impact of Hindu jurisprudence, second was the impact of
Buddhism, and the third was the impact of English law as the
result of the British conquest of the country towards the end
of the nineteenth century.

Some of my colleagues of this conference have already

MAUNG HTIN AUNG

207

spoken on the impact of Hindu thought and culture on the countries of Southeast Asia. The Hindu expansion overseas was well underway by the second and third centuries after Christ, and Hindu ideas and Hindu philosophies were beginning to remold the native patterns of belief and culture in Southeast Asia. In Burma, however, only the coastal region fell under Hindu influence. The Pyus by the fifth century had founded their kingdom of Prome, then situated only a few miles away from the sea, at the mouth of the Irrawaddy. The Mons, who belonged to the Mon-Khmer tribes that had settled in the regions now known as Thailand and Indo-China, had entered Lower Burma from the east, and their kingdom of Thaton, also then on the sea, seemed to have become powerful by the fifth century, about the same time as Prome. These two cities, Prome and Thaton, probably first became important as ports of call for Hindu merchant ships sailing between India and Malaya and Java, but even in those two kingdoms, Hindu influence was not strong. Thus Burma is the one country in Southeast Asia which was not Hinduized. By the eighth century after Christ, the Irrawaddy Delta was quickly forming, and Prome became farther away from the sea; the kingdom seemed to have declined rapidly, and the Pyus began to merge with the Burmese, who had now founded their kingdom at Pagan in Upper Burma. In the eleventh century, the Burmese made their kingdom strong enough to conquer and destroy the kingdom of Thaton. The Burmese were now supreme in the land.

But the conquest of Thaton opened the outer world beyond the seas to the Burmese. From the conquered Mons the Burmese became acquainted with Hindu literature and with Buddhist scriptures. Burmese society and Burmese law now experienced the double impact of Hinduism and Buddhism, but, of course, by that time, Hindu power in Southeast Asia was a spent force. Both Burmese society and Burmese law survived those two impacts.

Hindu jurisprudence and Hindu legal literature had

- 671 molded the native customary laws in the other regions of
177 Southeast Asia, and the great Hindu Code of Manu, the hermit,
the sage, the lawgiver, had gained enormous prestige and au-
thority in Southeast Asia. The Burmese scholars and lawyers
of the eleventh century studied the Code of Manu, but found
[565] little in it to interest them. The rigid caste system, which
served as the basis of Hindu law as embodied in the Code of
Manu, made no appeal to the Burmese with their classless
society. The Burmese never had an aristocracy or a middle
class. The king was above others, but others were all equal.
There was no hereditary nobility, and the Burmese have al-
ways been so individualistic that family names or surnames
have never existed with the Burmese. The officers of the king
could be said to have formed a nobility, but if that was so, it
was a nobility into which every Burmese could enter by talent
and personality alone. The king, the chieftain, and the head-
man were originally elected. Thus the idea of dividing society
into classes distinguished only by birth seemed strange to the
Burmese.
- 671 Nonetheless, the prestige of the Code of Manu was so high
773 in Southeast Asia that the Burmese decided to make Manu
their mythical law-giver. In Hindu mythology, Manu was a
hermit, divinely inspired. In Burmese legend, Manu became
a simple cowherd who was later elected king because of his
mastery of customary law. The Burmese Manu also became
a hermit later, but he became a hermit out of remorse be-
cause he once gave a wrong decision. This wrong judgment
of the great Manu is well known in Burmese folklore as the
case of the small cucumber. There was a cucumber plant
growing in a man's garden, but as it was a creeper, it grew
across the dividing hedge and bore fruit in the neighbor's
garden. Now the man and the neighbor quarreled as to who
was entitled to the small cucumber fruit, and they took their
case before the great Manu, who decided in favor of the neigh-
bor. But he soon reversed his decision, and feeling remorseful
over his previous judgment, became a hermit. This clearly

MAUNG HTIN AUNG

209

illustrates that with the Burmese, Manu had become only an ordinary human being with the human trait of making mistakes, so very different from the divine hermit of Hindu lore. ⁶⁷¹ ⁷⁷³

By the thirteenth century, the customary law of the Burmese came to be collected and written down by jurists and scholars. Throughout the intervening centuries until the British conquest of the country, such collections of the law, and also collections of judicial precedents were made from time to time by scholars and jurists. But those collections were not codes, and were not fully binding on the judges. In all these collections, Manu was mentioned as the law-giver, and this lip-service paid to the prestige of the Hindu Code of Manu has misled modern scholars, especially European scholars of Burmese history and Burmese law, into thinking that the Burmese law was merely the Hindu Code of Manu modified and transplanted almost overnight in Burma of the eleventh century. ⁶⁷¹ ^[178] ^[77]

But in the eleventh century, the Burmese did become Buddhists almost overnight. The Burmese took to Buddhism with great enthusiasm, because the way of life preached by the Buddha seemed to be identical with their own democratic way of life. The Buddhistic revolt against the rigid caste system of the Hindu society could be appreciated by the Burmese, who called the Hindu half-playfully and half-seriously, "kula" or "caste people," and the Buddhistic emphasis on the equality of all men appealed to the Burmese with their classless society and their own emphasis on individual freedom. The jurists and the scholars waxed enthusiastic over Buddhism, and they gave a Buddhistic coloring and a Buddhistic background to their collections of Burmese customary law. This misled the early British administrators and judges in Burma into thinking that Burmese customary law was Buddhistic in origin, and gave to it the misleading official name of "Burmese Buddhist Law." ¹⁷⁷ ⁶⁰⁹ ⁵⁶⁵ ⁷⁷⁹ ^[671]

The impact of the English legal system introduced into

210 SOUTHEAST ASIA IN THE COMING WORLD

671 The impact of the English legal system introduced into
177 the country after the annexation of 1886 shook Burmese cus-
178 tomary law to its very foundations, just as Burmese society
itself rocked with the shock of the impact. But Burmese so-
ciety soon regained its balance, and so did Burmese customary
law. The British, by statute, superseded the Burmese cus-
tomary law of contract and tort with their own English com-
mon law, but recognized the Burmese customary law regard-
ing marriage and divorce, adoption, inheritance, and religious
usage, and these branches of the customary law remain valid
today. Thus, whereas in India the legislature now struggles
against strong public opposition to pass new statutes intro-
ducing changes in the Hindu law of marriage and inheritance
so as to adjust Hindu law to new developments in Hindu so-
ciety, the Burmese, after their hard-won independence, have
not found it necessary to modify by statute or to codify their
customary law. With regard to the English law of contract
and tort that was introduced into the country after the British
annexation, the Burmese did not find the new law strange
and mysterious, for the fundamental principles of Burmese
law of contract and tort had certain similarities with the funda-
675 mental principles of English common law. Thus the principles
671 of specific performance, of damages, of a period of limitation,
672 and a remoteness of damage were known to the Burmese law
also. Even the English legal plea of "Act of God" for exemp-
tion from liability has its Burmese counterpart in the plea of
"ill fortune." The following rules of law relating to ferries
will illustrate this aspect of Burmese law:

If a man, for the sake of hire, becomes a ferryman, let him fol-
low these rules. He shall carefully consider and take only the cor-
rect fare. If he is careless, or foolish, or immodest, and as a result,
property of a passenger is spilled or damaged, let him make good
the loss to the owner. But if he crosses with proper care and proper
behaviour, and property be lost or damaged, let him blame ill
fortune, and he shall not be liable. Women with child, monks, and
sick persons shall be ferried across, even if they have no money to
pay as fare.

MAUNG HTIN AUNG

211

Although the kingdoms of Prome and Thaton probably based their wealth on trade and commerce, and the kingdom of Pagan based its power and wealth on commerce, the Burmese have been simple agriculturists throughout their history, and therefore Burmese customary law of contract and torts dealt with the business of agriculture, such as water-rights, land-rights, hire of cattle, carts, and implements, and with the relations between employers and laborers. As has been stated before, the Burmese law of contract and tort is no longer valid, and although the Burmese still remain agriculturalists, their business of agriculture is no longer simple as in the days before the British annexation. Nonetheless, some of the rules of law in contract and torts are still of interest. For example, let us consider the law relating to payment of wages to laborers. The Burmese law did not give emphasis to that part of the wages which was to be in the form of money. But it specifically laid down that (1) in the case of an agricultural laborer, he was to receive, in addition to wages in money, a suit of clothes at the end of each "season"—i.e., the "growing season" and the "reaping season," and (2) in the case of a non-agricultural laborer, he was to receive, throughout the period of his employment and in addition to wages in money, "regular meals of rice and curry." For the agricultural laborer, who had his own store of paddy, clothing was of great consequence, and to the nonagricultural laborer food was of great consequence. Thus the Burmese law ensured that the fluctuation either in the general level of wages or in the value of money should not adversely effect either the laborer or his employer. Moreover, as both the laborer and the employer wore the same homespun clothes and ate the same food, the arrangement was fair to both parties. With regard to professional services rendered also, the Burmese law attempted to be fair to both parties, as could be seen from the following rules of law regarding physicians and lawyers:

If a physician has been called for fee to attend to a sick person, but the sick person recovers or dies before the physician reaches

- 671 his bedside, the physician shall be entitled to his fee if he has
759 reached at least the doorway of the sick person's house. In the same
693 way, if a suit is withdrawn or settled, or the judge does not find it
necessary to call upon the pleader to argue, the pleader shall be
entitled to his fee if he has spoken even a few words, or if he has just
pulled up the sleeve of his gown in a gesture of speech. If a client
wishes to call in another physician, he shall pay the full fees to the
first physician, and shall also offer him a cup of water in token of
friendship. If a client wishes to engage another pleader, he shall
pay the full fee to the first pleader.

671 The following rules regarding void sales and purchases will
432 further illustrate the essential similarity of Burmese law and
the English law of contract:

There are four cases when a sale or a purchase is void: (i) if the price fixed is below its value; by value it is meant market value at the time of the sale, and even a ruby worth a kingdom before may be sold for one-eighth of a basket of rice, if that is the prevailing market value of rubies; (ii) if the buyer is aware that the ownership of the property is being disputed; (iii) if the whereabouts of the property are not known; and (iv) if the owner of the property is in confinement or under duress.

- 672 Just as in the English law, under the Burmese law a per-
683 son was responsible for any injury which was the foreseeable
consequence of his acts. Thus, it was a rule of law that if a
person induced another person to accompany him to a place
full of perils, and the latter suffered injury, the former was
to pay damages to the full amount of the injury; however,
if the second person was aware of the dangerous nature of the
place, the damages payable were only half the amount of com-
pensation for the injury. Under the same principle, if a host
entertained his guest so well that the latter became intoxi-
cated, the host owed a duty in law to see that the guest reached
his home safely; if the guest should be allowed to go home
unattended, and if he should die or suffer injury on the way
through illness, exposure, snake-bite, attack by robbers or by
wild beasts, the host was liable to pay full compensation. The

MAUNG HTIN AUNG

213

principle of contributory negligence was also known to Bur- 672
mese law, and the following rules of law regarding "travelling 683
at night with due caution" will serve as an illustration:

If there be occasion for a person at night to go about the city or the town, or the village, he shall go only with a lantern, for if he goes about without a lantern and is stopped, or hindered, or attacked, he shall not be entitled to damages. If, however, he is going about in search of a doctor, and if he shouts out this fact in the darkness, he shall be entitled to full compensation from the offender who stops or strikes him, even though he carries no lantern. In the same way, if a young woman goes about at night beyond the usual hours when people go about, and if she wears no kerchief on her breast, and if her modesty is outraged, she shall not be entitled to any damages.

The unity of Burmese society has always been the family, 671
but unlike the rigidly knit Roman family or the Hindu joint 693
family, it easily disintegrates. A Burmese family is loosely knit by ties of blood, and sometimes of marriage, and thus it usually consists of the father, the mother, and their unmarried sons and daughters. The sons however can leave the family even before marriage on attaining the age of puberty (sixteen years of age), and the daughters on attaining the age of majority, but sons and daughters of course usually leave the family only on marriage. Sometimes sons and daughters decide to remain in the family even after marriage, at least for some time. The head of the family is the father, and on his death, the mother succeeds to the headship of the family, as in Burmese law the husband and wife are heirs to each other. The head of the Burmese family exercises general control over the family, but unlike the heads of the Roman and Hindu families, he performs no religious duties. He or she has the right to betroth his or her daughter under the age of majority to a male of his or her choice, but the right is subject to the daughter's right of repudiating the betrothal, either by refusing to marry the man chosen by her parent, or by compelling the parent to recognize her betrothal to the man of her own choice. [584]

- 671 her own choice. The head of the Burmese family can also give
593 away children under the age of puberty or majority to another
597 family for adoption, but when the child attains the age of
puberty or majority, he or she has the option to choose in which
family (i.e. his original family or his adoptive family) he
671 will remain. Acquisitions by members of the family accrue
593 to the family, but as in Roman and Hindu laws certain classes
428 of acquisition by members of the family accrue to the acquirer
and not to the family. Gifts from grandparents, from the
king, and in certain cases, from strangers, and earnings through
exercise of skill in the arts and in astrology, medicine, ad-
vocacy, and alchemy accrue to the acquirer. When a member
of the family wishes to leave the family, there is no necessity
to gain the assistance of a court of law. By mutual consent
among the members, he is permitted to leave and he is given
his share of the family estate. When the whole family decides
to break up also, no formality is required, and by general con-
sent, the family estate is divided between the members accord-
ing to the rules of law pertaining to the partition of an estate
into various shares.

671 One of the main features of Burmese society is the high
562 status of its women. Unlike the situation in Hindu or Chinese
society, the Burmese woman has never been a mere chattel
at the disposal of the Burmese man. Since prehistoric times
Burmese women have enjoyed an equality of status, rank,
and opportunity with men. Under the Burmese kings, the
women held high office, and served often as headman, chief-
[773] tainess, and queen. In Burmese folktales dealing with strange
disputes and wonderful decisions, which are known as Juristic
Tales, the judge is a woman, namely Princess Learned-in-the-
Law. At the present day, all the learned professions are open
to women, and approximately 25 per cent of the students at
the University of Rangoon are women.

671 The high status of women in Burmese society is reflected
583 in the Burmese customary law relating to marriage, divorce,
586 and inheritance. In Burmese law, marriage is purely a civil
428

MAUNG HTIN AUNG

215

contract, founded on the consent of the man and woman to
openly "eat and live together." Religion has nought to do
with the marriage, and no special ceremony is necessary, and
therefore in a court of law proof of marriage is not to be
found in certificates of documents or evidence of a marriage
ceremony, but in the testimony of witnesses that the man
and woman lived together as man and wife. No Burmese man
or woman can be forced into marriage without his or her con-
sent. After a son has attained the age of puberty, or a daughter
the age of majority, even the consent of the parents is no
longer necessary. Divorce results without much formality
when both the husband and the wife mutually agree to part.
Burmese jurists in their writings often describe the husband
as the lord of the wife, but that seems to be mere opinion, and
they often advise the wife to obey her husband, but it does
not mean that their advice is always followed. The wife has
a right to divorce her husband without his consent, if he is
guilty of cruelty or serious matrimonial misconduct. On di-
vorce, the wife takes a substantial share of the joint estate, and
if she should marry again, she remains absolute owner of her
estate from her previous marriage, and does not share it with
her second husband. But although divorce therefore is com-
paratively easy, and the wife enjoys an important position in
the family, divorces have always been rare, and an atmosphere
of cordiality and harmony prevails in the Burmese family.

Burmese women have always possessed full rights of in-
heritance. As the husband and wife are the heirs of each other,
on the husband's death, the wife inherits a major share of the
family estate, and full authority as head of the family if the
family decides not to disintegrate and partition the estate.
On the death of the surviving parent, the daughters have full
rights of inheritance in competition with their brothers. As
the Burmese customary law has never recognized a right to dis-
pose of property by will, these rights of inheritance cannot be
defeated in any way.

These, then, briefly are the main features of Burmese cus- 000

216 SOUTHEAST ASIA IN THE COMING WORLD

671 These, then, briefly are the main features of Burmese customary law. The loosely-knit family with an atmosphere of cordiality and harmony is still the unit of Burmese society at the present day, and the essence of Burmese customary law at the present day is the same as many centuries ago. My colleagues of this conference who spoke before me have emphasized the fact that Southeast Asia as a region has been the cross-road of many cultures. Burma has borrowed freely from the great cultures of her neighboring countries, but at the same time, she has been able to preserve her own national character and her own national institutions. I have emphasized the similarity in spirit of Burmese and English law, in an attempt to show that the Burmese people have evolved a system of law as fair and just as the common law of England, which lawyers and jurists all over the world have learned to admire and respect. I have also emphasized the Burmese love of freedom and personal liberty, in an endeavor to prove that the idea of democracy that prevails in the Union of Burma at the present day is not a mere borrowing from the West. And as long as the Burmese people retain this love of freedom, and as long as Burmese law retains its spirit of justice and fairness, the Burmese do not need to be anxious of their future in a changing and uncertain world.